

Public Hearing - March 7, 2022

Environment Committee

Testimony Submitted by Commissioner Katie S. Dykes

SB 238 - AN ACT CONCERNING REVISIONS TO CERTAIN ENVIRONMENT RELATED STATUTES

Thank you for the opportunity to present testimony regarding the Department of Energy and Environmental Protection's (DEEP) proposal, **SB 238, AN ACT CONCERNING REVISIONS TO CERTAIN ENVIRONMENT RELATED STATUTES**. This proposal, which DEEP **strongly supports**, makes several revisions to environmental statutes intended to streamline and improve DEEP's programs and processes. The Lamont Administration is committed to ensuring that the administration of our environmental and conservation programs and regulations is carried out in an efficient, transparent, and predictable manner, to facilitate compliance and utilize limited agency resources in the most effective and thoughtful way. The proposed revisions below reflect this intention.

Section 1

This section would allow for online wastewater treatment facility operator certification exams, incorporate a Class 4 Operator in Training classification, allow an operator to retain certification through appropriate continuing education after leaving the field and allow transition of administration of an operator certification renewal program to the New England Interstate Water Pollution Control Commission (NEIWPCC) which administers wastewater certification programs for other New England States. All of these changes would enhance the convenience and efficiency of obtaining and retaining these important certifications.

Section 2

This section would clarify that aquaculture structures approved by the Army Corps of Engineers are exempt from state permits under sections 22a-359 through 22a-363f of the general statutes, in accordance with existing practice and legislative intent.

Section 3

This section repeals the requirement that Connecticut municipalities obtain approval from the DEEP prior to the adoption of a municipal noise control ordinance. This simplifies the process for municipalities and eases an administrative burden for DEEP. This section would amend the State's noise program to provide municipalities the option to adopt a noise program without obtaining approval from DEEP. Making the State's noise control program smarter and more flexible by providing municipalities the opportunity to adopt a program that best serves their needs is a reasonable and responsible approach to this issue since local governments are the authorities best situated for effective enforcement. Funding for the State noise program was

eliminated over 20 years ago. As such, DEEP does not have staff trained for noise-related issues, nor does DEEP have the equipment to test and enforce noise regulations. Regulation of noise has been transferred *de facto* to local authorities. Noise events are highly localized, limited in duration and often occur outside of normal working hours.

Section 4

This section corrects an error related to an omitted citation to the Code of Federal Regulations needed to provide DEEP the authority to require certain air pollution sources to obtain a permit under Title V of the federal Clean Air Act. If this correction is not made, sources in Connecticut could be subject to direct regulation by the U.S. Environmental Protection Agency (EPA) rather than DEEP.

This minor revision adds authority for DEEP to implement federal requirements through Title V operating permits for certain incineration sources. The change does not create new obligations for those sources, nor does it decrease standards as they must currently meet the same standards at the federal level. This change will create a significant efficiency gain for DEEP and a better compliance situation for regulated sources of air pollution.

The Title V operating permit program consolidates all the statutory and regulatory air pollution control requirements applicable to the State's largest sources of air pollution into a comprehensive document, enabling those sources and DEEP to more easily assure compliance and limit pollutant emissions for benefit of the environment and human health. Through this program DEEP is delegated the authority to implement multiple federal requirements codified in Title 40 Code of Federal Regulations (CFR), but the statute currently inadvertently omits Part 62, even though Part 62 is included in the implementing Title V permit program regulation.

This lack of statutory authority has become a more significant problem in the last decade as EPA has promulgated new requirements in 40 CFR Part 62 for a number of incineration sources, including municipal sewage sludge incinerators in Waterbury, Naugatuck and Hartford. As a result, DEEP cannot issue Title V permits to the owners of the sewage sludge incinerators, creating a deficiency in Connecticut's Title V operating permit program while subjecting the owners of the incinerators to a combination of state and federal oversight for air emissions.

Absent this addition to the statutory authority, DEEP's only other option is adoption of a regulation for each category of incinerator regulated by Part 62. That option is a lengthy and resource intensive process. If provided with the missing piece of statutory authority, DEEP can manage the Part 62 sources with no additional resource needs.

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Section 5

Section 5 would implement a Technical Revision to Section 23-37(d) to eliminate the statutory conflict with Sections 23-35 and 23- 55 that authorize providing mutual aid among states. Section 23-35 authorizes the State Fire Warden to equip and maintain qualified wildland firefighters and to deploy those firefighters to fight wildland fires within the state or

when called upon by another state. Section 23-55 authorizes the State Fire Warden to carry out regional state and eastern Canadian provinces mutual aid through Articles articulated in the Northeastern Forest Fire Protection Compact (Sec. 23-53).

Public Act 19-37, An Act Concerning Qualified Forest Firefighters, addressed a critical need in meeting the mandates established Chapters 449 and 450 of the general statutes, including sections 23-35 and 23-55, by making clear that the state forest fire warden may, when she determines additional state forest fire control personnel are required, supplement state forest fire control personnel with temporary emergency workers who meet the training and qualification requirements of the National Wildfire Coordinating Group. However, the Public Act inadvertently created a conflict between these Chapters by limiting the additional personnel that may be used to supplement the state forest fire control personnel to only those working in the state, rendering the state fire warden's capacity to provide mutual aid to other states moot. Expanding the reference from "in this state" to include all members of a forest fire compact authorized to provide reciprocal aid will resolve this statutory conflict, restore the intended benefits of the compact and enhance the State's capacity to address catastrophic fires.

Section 6

This Section includes a technical revision to Section 23-53, mutual liability insertion for Article IX that will allow for the exchange of forest fire protection and control resources beyond the northeast. As provided for in Chapter 450 of the general statutes, Connecticut is a member of the Northeastern Forest Fire Protection Compact. Established in 1949, this was the nation's first regional forest fire compact. At that time, no need was found to include a clause within the compact to address issues of compact-to-compact liability, and hence none of the member states included such language in their relevant statutes.

Concerns over issues of liability have evolved by the time the establishment of additional compacts was contemplated. Currently eight interstate forest fire compacts exist in the United States and Canada, encompassing forty-three states. Some of the later compacts included liability language, but some of the earlier compacts did not, since they modeled their language after the Northeast Compact. Attempts at federal legislation to address the issue on a nationwide scale have not succeeded to date, and therefore it is left up to individual compacts and states to resolve the issue. The consequence of this gap is that no state is willing or capable of providing mutual aid to a state whose membership in a compact is based on statutory authorization that does not address the compact-to-compact liability issue. Recognizing this gap within the Northeastern Interstate Forest Fire Protection Compact, each state within the compact is left to address the deficiency through legislative action. Thus far, nine of the twelve states and provinces within the Northeastern Compact have addressed the compact-to-compact liability language. This proposal is to do that for Connecticut. Inserting proposed language into Article IX will correct this deficiency.

During the summer of 2020 Connecticut experienced severe summer drought and numerous persistent ground fires which taxed available in-state resources, both at DEEP and on the local level. Often when Connecticut experiences increased wildfire activity, adjacent states which are members of the Northeastern Forest Fire Protection Compact are also experiencing increased wildfire activity, typically due to regional drought conditions. This limits the ability of

participating Northeast Compact state resources to provide mutual aid due to similar home-state threats.

In 2016, Connecticut had one of the largest fires in decades, and less than 200 miles from our border, New York and Pennsylvania had multi-thousand-acre fires. At that time, almost the entire Northeast was experiencing similar drought and wildfire issues. If Connecticut were in the position of needing assistance, events over the last few years have shown that at least three of the eight compacts nationally would not send resources to Connecticut because we do not have proposed Compact to Compact liability language in place. Amending Section 23-53 by including extended liability coverage for resources exchanged between compacts will reduce the state's risk exposure and will allow Compacts to provide Connecticut assistance if needed. Article IX of section 23-53 requires other 100% reimbursement to Connecticut by the requesting agency should state resources be deployed out of state. It is fair and equitable to maintain reciprocal liability provisions to cover any lawfully incurred expenses in the exercise of these services from out of state providers to extinguish forest fires.

Section 7

The Forest Practices Advisory Board (FPAB) was established by section 23-26h in 1991 and is charged with periodically reviewing applicable regulations concerning forest practices and certification of forest practitioners. The FPAB also periodically reviews programs and policies of the Department regarding forests, forest health, and the technical proficiency of forest practitioners. FPAB members are appointed for a four-year term and serve until their successor is appointed. FPAB appointments are very specific to the appointing authority as well as the background, representation, and professional experience of the Board members themselves. This ensures a well-balanced advisory body to the Department.

Currently, section 23-65g(b) states, "Vacancies on the board shall be filled in the same manner as the original appointments," and provides that members shall be appointed for a term of four years. Appointments are made by the Governor and General Assembly leadership. As considerable time has passed since the original appointments were made and the appointing authorities are currently not explicitly stated in statute, some confusion has ensued. Since 1991, the Agency has forwarded FPAB recommended vacancy refills to the appointing authority based upon membership criteria and the original appointment. This proposal reestablishes these authorities as they always have existed by explicitly stating the membership criteria that the Governor and General Assembly leadership have, based upon the original FPAB appointments.

Section 8

Section 8 would provide a 60-day renewal grace period for an expired forest practitioner's certification, allowing those who failed to submit a complete application for renewal on or before the expiration date of their forest practitioner certification to submit such completed application and achieve forest practitioner certification without also having to submit to another examination. Late applications would be subject to a late fee to be established by regulation as per subdivision (7) of section 23-65h.

Currently, forest practitioners that fail to renew in a timely basis must also submit to the certification examination. This provision will reduce the Agency's re-examination administrative

burden, and possibly avoid non-compliance enforcement actions solely based upon a recently expired certification. At least six states (Alabama, Maine, New Hampshire, North Carolina, South Carolina and California) that have Forester licensing also have similar provisions for late renewals.

This section will also grant forest practitioner certification without examination to persons possessing a license or certification from another state or professional organization such as the Society of American Foresters (SAF). By granting certification to practitioners who already have proven their ability and knowledge through a credible credentialing process, the Department would be relieved of maintaining reciprocity agreements with other entities and the burden of examining persons who have already proven themselves in a similar venue. When this statute was first created, many states did not have professional forest practitioner licensure and SAF had not yet developed its Certified Forester (CF) program. Maine, South Carolina, and Vermont currently accept the SAF CF exam as a substitute for their state administered forester licensure exams.

Section 9

This section eliminates the annual continuing education unit (CEU) reporting and the biennial CEU attainment required for all forest practitioners. This will reduce the Department's and the forest practitioner's administrative burden adhering to the Forest Practices Act. In lieu of annual CEU reporting, the practitioners **will attest** to CEUs earned on their annual activity reports. **Proof of CEUs will be required once every four years upon occupational licensing recertification.**

Section 10

This section would allow the holder of a pesticide certification that has lapsed for less than one year to renew their certification without re-examination and would establish late fees for a late renewal. The proposed change would provide for consistency with the existing grace period allowed for the renewal of arborist certification, which is managed as a pesticide certification category, thereby eliminating confusion for those renewing multiple certification categories. It would also enable those renewing within the grace period to return to work sooner than they would be able to otherwise.

Section 11

This section gives DEEP flexibility to register, renew and collect pesticide product registration fees on an annual basis. Pesticides are presently registered and renewed in five-year cycles based on the first letter of the registrant's name. DEEP has moved the pesticide registration process to an online electronic submission system in which pesticides are registered and renewed on a calendar basis. For registrants with multiple pesticide product registrations, the five-year calendar cycle will result in multiple renewal cycles. This proposal will enable registrants to maintain all of their pesticide registrations on an annual basis and eliminate the confusion that will result from the calendar based five-year registration cycle.

This proposal is expected to enhance the efficiency of the new system by reducing staff time required to process applications for pesticide registration and by eliminating the need to process refunds of fees for registrations that are discontinued by the registrant within the five-year

registration period. All of the other New England states currently register and renew products on an annual basis and have found that this registration schedule greatly simplifies the pesticide registration and renewal process. Registrant businesses also prefer the annual registration as a more affordable option. The online electronic submission system can easily be updated to accommodate this change to an annual registration.

Section 12

This section would provide authority to the DEEP Commissioner to establish, in a general permit, fees sufficient to recover the regulatory cost for monitoring and assuring compliance with terms and conditions of such general permit.

For over twenty-five years, the Department has been transforming its permitting programs to reduce the timeframes for processing applications for permits. To achieve this objective, the Department has increasingly provided access to coverage under general permits as the regulatory control mechanism, rather than individual permits. General permits cover a substantial majority of the activities regulated by the Department. Although the application process is more efficient, compliance with general permits must still be monitored through review of regular reports, inspections, etc. For individual permits, Section 22a-6(11) of the General Statutes authorizes the Commissioner by regulation to, among other things, assess both application fees for processing applications, and annual fees to cover the costs for monitoring and assuring compliance with the terms and conditions of any permit. However, Section 22a-6f of the General Statutes, which authorizes the assessment of fees associated with processing a registration under a general permit, does not authorize the assessment of an annual fee to cover the costs for monitoring compliance with the terms and conditions of the general permit. As a result, significant revenue has been lost over time as general permits have become the predominant regulatory mechanism.

The primary purpose of this section of the bill is to recover revenue that has since been lost to the state when regulating an activity under a general permit in lieu of an individual permit. The bill would authorize the Department to assess annual fees to recover the costs to the state for monitoring and assuring compliance regardless of whether the activity is regulated under an individual permit or general permit.

Sections 13-17

DEEP supports these provisions because they continue an effort started in 2021 to transition Connecticut to Agreement State status with the passing of Public Act 21-02. Sections 13 through 17 of this proposal make minor revisions to radiation statutes, specifically to: clarify that NRC continues to regulate specific activities (such as nuclear power plants and spent nuclear fuel storage), ensure existing NRC licenses remain effective upon signing an Agreement for continuity until Connecticut licenses are issued by DEEP, exempt federal agencies from state licensing requirements, allow DEEP to enter agreements with NRC for participation in rule making and training of staff, and to allow DEEP to adopt civil penalties to enforce the regulations the C.G.A. authorized DEEP to adopt last year. In short, these changes do not fundamentally change the path Connecticut through the legislature started last year.

In the past year the Department has taken significant steps to effectuate this change, including:

Making the following staffing changes:

- Recently hired a Certified Health Physicist to the AS staff and have 3.5 FTEs assigned to the agreement state effort.
- Staff have completed over 1600 person-hours of inspector training (all training cost covered by the NRC).
- Staff have accompanied NRC inspectors at over 30 inspections (over 70 person-hours of inspections).

DEEP and NRC staff and legal have been meeting regularly to ensure a seamless integration of program requirements

- Benchmarking against the most recent agreement state application in Vermont.
 - Participating in monthly and at annual meeting for the Organization of Agreement states
 - Developed full implementation schedule with NRC Project Manager
- DEEP has continued to maintain regular and ongoing communications with the regulated community including:
 - Conducting tribal outreach (federal and state tribes) over the last year.
 - Outreach with regulated community including Hartford Healthcare, Yale New Haven Hospital, Electric Boat, UCONN, and Yale University
- Regulatory Update
 - Over the past year DEEP has been working on a revised regulatory package to align with the NRC compatibility requirements including engaging with the regulated community in appropriate path.

As background, on December 10, 2020, Governor Lamont submitted a letter of intent to the Nuclear Regulatory Commission (NRC) to become an “Agreement State” in accordance with the Atomic Energy Act of 1954. In 2021, the Connecticut Legislature took the first steps in the process by passing legislation in PA 21-02 to provide authority to DEEP to begin the process, adopt regulations and coordinate with the Nuclear Regulatory Commission (NRC) on transfer of NRC licenses to Connecticut but **excluding federal facilities, nuclear power plants and spent nuclear fuel storage facilities that remain under NRC jurisdiction.**

As with last year, this effort will strengthen and sustain the State’s radiation safety program and streamline the regulatory interface for business, schools and universities, and healthcare around the state, a benefit reflected by the support of groups representing business and healthcare for last year’s proposal. Agreement State status would provide significant benefit to the state, its environment, and its citizens by:

- ***Retaining Funding In-State***-Under the Agreement State framework, approximately \$1.2M in annual licensing fees from 125 regulated sources will be retained by the state thus ensuring the sustainability of radiation safety resources and response capabilities in the state; and
- ***Promoting Accessibility and Responsiveness for Constituents***-Ensuring a more accessible and responsive regulatory program for citizens as well as the regulated community due to local rather than national licensure. As an Agreement State, both citizens and licensees will have ready access state inspection and licensing personnel to more efficiently resolve questions and issues; and

- ***Streamlining Licensing and Regulatory Procedures-*** State-level regulatory oversight of radioactive material eliminates dual regulatory responsibilities. Currently, the regulated community must interact with the NRC office located in King of Prussia, PA, for part of their operations and DEEP for the remainder. This is a cumbersome framework that leaves gaps in the efficient control and security of radioactive material that could place the public at potential risk to exposure to ionizing radiation as well as adversely impact efficiency of business operations: and
- ***Achieving Regulatory Consistency Regionally and Nationally-*** Consistent regulatory frameworks achieve compatibility with states within our region and will reduce barriers to interstate commerce by ensuring the State's radiation protection regulations are compatible with federal regulations and enable the use of reciprocity agreements to further streamline industry compliance.

Thank you for the opportunity to present testimony on this proposal. Should you have any questions, please do not hesitate to contact Harrison Nantz at Harrison.Nantz@ct.gov.